

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
SBC Petition for Declaratory Ruling That)	WC Docket No. 05-276
UniPoint Enhanced Services, Inc. d/b/a)	
PointOne and Other Wholesale Transmission)	
Providers Are Liable for Access Charges)	
AT&T's Phone-to-Phone IP Telephony)	
Services are Exempt from Access Charges)	
Petition for Declaratory Ruling That VarTec)	
Telecom Inc. Is Not Required to Pay Access)	
Charges to Southwestern Bell Telephone)	
Company or Other Terminating Local)	
Exchange Carriers When Enhanced Service)	
Providers or Other Carriers Deliver the Calls to)	
Southwestern Bell Telephone Company or)	
Other Local Exchange Carriers for)	
Termination		

**REPLY COMMENTS
of the
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES;
UNITED STATES TELECOM ASSOCIATION; and the
WESTERN TELECOMMUNICATIONS ALLIANCE**

The Commission should promptly confirm in response to SBC's petition¹ that carriers offering interstate phone-to-phone services that originate and terminate on the public switched telephone network (PSTN) are subject both to originating and terminating interstate access charges, regardless whether such calls utilize Internet

¹ Petition of the SBC ILECs for a Declaratory Ruling, WC Docket No. 05-276 (Sept. 21, 2005) (*SBC Petition*).

Protocol (IP) transmission technology or are routed via intermediate carriers prior to termination by local exchange carriers (LECs).

The application of access charges to “IP-in-the-middle” interexchange traffic was firmly established in the *AT&T Order*.² The Commission made clear in that proceeding use of IP transmission technology to carry long distance calls that originate and terminate on the PSTN has no effect on a carrier’s liability for payment of access charges.³ To the extent carriers described in SBC’s petition are attempting to re-argue this issue in the context of collection actions initiated by SBC or other carriers, the Commission should promptly affirm its prior decision applies.

The Commission should likewise firmly reject arguments that carriers offering phone-to-phone interexchange voice services are not “interexchange carriers” because they also offer enhanced services,⁴ or because they may employ packet-switching or other new technologies in delivering their transmission services.⁵ As Verizon correctly points out, the fact an entity may be an Internet service provider (ISP) with respect to some of its service offerings does not exempt it from access charges when it is providing

² Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361, *Memorandum Opinion and Order*, 19 FCC Rcd 7457 (2004) (*AT&T Order*)

³ “[W]hen a provider of IP-enabled voice services contracts with an interexchange carrier to deliver interexchange calls that begin on the PSTN, undergo no net protocol conversion, and terminate on the PSTN, the interexchange carrier is obligated to pay terminating access charges.” *AT&T Order* at ¶ 19. See Wiltel at 3, SBC at 9, ACS at 1, JSI at 3, Alltel at 2, NASUCA at 2, New Jersey at 5, Cinergy at 3, Frontier at 5, Cincinnati Bell at 3, Qwest at 3, USTelecom at 6, BellSouth at 1, CenturyTel at 1, Broadwing at 1.

⁴ See *SBC Petition* at 4.

⁵ *Id.*

telecommunications services,⁶ nor does the use of new transmission technology make ordinary interexchange services “enhanced.”⁷

The Commission should deny VarTec’s petition to the extent it asks for an exemption from access charges for carriers seeking to circumvent the payment of such charges by routing their interexchange traffic through intermediate carriers prior to termination by LECs. The record in this proceeding makes clear VarTec is an interexchange carrier (IXC). By its own admission it contracts with “provider[s] of IP-enabled voice services . . . to deliver interexchange calls.”⁸ It should not be permitted to avoid the payment of access charges by the expedient of routing this traffic through other carriers who then terminate traffic on the PSTN. As SBC explains, the fact VarTec does not order service directly from LECs does not absolve VarTec from responsibility for access charge payments if it is interconnected in such a manner that causes it actually to receive access services.⁹

SBC’s petition suggests LECs are already losing millions of dollars a month in access charges due to such schemes. Should the FCC fail to act, it would only encourage

⁶ Verizon at 2.

⁷ *Id.* at 4-5.

⁸ VarTec’s Petition for Declaratory Ruling, WC Docket No. 05-276 (Aug. 20, 2004) at 2 (*VarTec Petition*).

⁹ SBC Comments at 2 (explaining application of “constructive ordering doctrine”). BellSouth likewise suggests (at 8) that in ordering service via an intermediate carrier, VarTec has appointed that carrier to act as its agent and is accordingly liable for the intermediate carrier’s actions (“VarTec’s attempts to avoid liability for access charges on the grounds that it has no direct relationship with a terminating carrier do not survive scrutiny VarTec has a common carrier obligation to act reasonably in delivering the traffic it contracts to carry for its customers to the called parties selected by those customers. It may, reasonably, subcontract its carriage responsibility provided it still offers its end user customer the telecommunications service it requested. . . . Any subcontracted carrier is acting as VarTec’s agent under the specific authority of VarTec to deliver its end user’s traffic to the called party.”). Several commenters also point out that VarTec may be jointly and severally liable for access charges with carriers who function as intermediaries in delivering such traffic for termination. *See e.g.*, SBC Comments at 4, 17.

other carriers to resort to similar unlawful self-help measures. The Commission must not allow IXCs to evade liability for access charges in this manner. It must instead take action promptly to facilitate collection of carriers' legal and lawful tariffed access charges by issuing the declaratory ruling requested by SBC and by denying VarTec's claim for exemption from access charges.

The Commission should also promptly deny VarTec's claim for compensation from terminating LECs for the traffic VarTec carries for other carriers. Virtually all commenters addressing this issue agree that VarTec has misread the Commission's rules and prior precedent in asserting this claim.¹⁰ As SBC points out, VarTec's argument is a diversionary tactic that should be dealt with, if at all, in the Intercarrier Compensation Proceeding and should not delay prompt Commission action in response to SBC's petition for declaratory ruling.¹¹

CONCLUSION

The Commission should promptly issue the declaratory ruling sought by SBC and deny VarTec's petition to the extent it seeks exemption from access charges for IXCs that receive access services indirectly from LECs. The Commission should also deny

¹⁰ See, e.g., ACS at 6; Alltel at 12; BellSouth at 11-12 ("The originating CMRS provider, as the cost causer, should pay upstream carriers for the use of their network, and VarTec has no claim against any terminating ILEC based on Answer Indiana [*Texcom*] or any other source.") CenturyTel at 6 (describing VarTec's argument as "nonsensical"); Frontier at 9.

¹¹ See generally SBC Comments at 34-35.

VarTec's request insofar as it seeks compensation from terminating LECs for transiting traffic.

Respectfully submitted,

December 12, 2005

INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE

By: /s/ David W. Zesiger
David W. Zesiger
Executive Director
1300 Connecticut Ave., NW Suite
600
Washington, DC 20036
(202) 355-1388

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By: /s/ Richard A. Askoff
Richard A. Askoff
Its Attorney
80 South Jefferson Road
Whippany, New Jersey 07981
(973) 884-8000

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

By: /s/ Daniel Mitchell
Daniel Mitchell
Jill Canfield
Its Attorneys
4121 Wilson Boulevard
10th Floor
Arlington, VA 22203
(703) 351-2000

ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst

21 Dupont Circle NW
Suite 700
Washington, DC 20036
(202) 659-5990

UNITED STATES TELECOM
ASSOCIATION

By: /s/ James W. Olson
James W. Olson
Indra Sehdev Chalk
Jeffrey S. Lanning
Robin E. Tuttle

607 14th Street, N.W. Suite 400
Washington, DC 20005-2164
(202) 326-7300

WESTERN TELECOMMUNICATIONS
ALLIANCE

By: /s/ Gerry Duffy
Gerry Duffy
Counsel for WTA
317 Massachusetts Ave. N.E.,
Suite 300 C
Washington, DC 20002
(202) 548-0202

CERTIFICATE OF SERVICE

I hereby certify that a copy the Associations' Reply was served this 12th day of December 2005, by electronic filing and e-mail to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC. 20554*

Jennifer McKee
Federal Communications Commission
Wireline Competition Bureau
PPD
445 12th Street, SW
Washington, DC 20554
Jennifer.McKee@fcc.gov

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, SW
Washington, DC 20554
fcc@bcpiweb.com

*Filed via ECFS